

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
SPECIAL CIVIL APPLICATION No 4540 of 1996  
For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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KADARBHAI M MIRZA

Versus

DISTRICT MAGISTRATE

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Appearance:

MS DR KACHHAVAHA for Petitioner  
SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

Heard learned advocate Mr. D.R. Kachhvah for the petitioner and Mr. Nigam Shukla, learned APP, for the respondents.

This Special Civil Application is directed against the detention order dated 25th April 1996, passed by the District Magistrate, Vadodara, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985.

The detention order dated 25th April 1996 was executed on the same day, i.e. 25th April 1996 and since then the petitioner is under detention lodged at the District Jail, Junagadh.

The present Special Civil Application was filed

in this Court on 1st July 1996 and on 2nd July 1996 rule returnable on 2nd August 1996 was issued. However, so far, no reply has been filed by the respondents, nor has any affidavit been filed by the detaining authority.

The grounds enclosed with the detention order show that in all seven criminal cases under the Bombay Prohibition Act were registered against the petitioner during the period from 1992 to 1996. Apart from the allegations of these criminal cases under the Bombay Prohibition act, the detaining authority has considered the statements of three witnesses, who have stated against the petitioner's anti-social activities and that he was engaged in the business of unauthorised liquor. The detaining authority has also noticed that identity of these witnesses is required to be kept secret for the reason of security of the witnesses. The detaining authority has also found that the petitioner was engaged in anti-social activities and had become a problem for maintenance of public order and for the security of the peace loving people of the area, and to prevent the petitioner from continuing his anti-social activities, it was necessary to detain him.

The detention order is challenged on more than one grounds, but the learned advocate for the petitioner has kept his arguments confined to the question that, even if the allegations levelled against the petitioner are taken to be true, they do not constitute a case of breach of public order, and at the most it would constitute a case of breach of law and order.

I have considered the submissions made on behalf of both the sides. In view of the decision of this Court rendered on 4th October 1996 in Special Civil Application No. 3879 of 1996, it is clear that such allegations do not constitute a case of breach of public order. The allegations and the materials which have been relied upon by the detaining authority can at best constitute a case of breach of law and order. It is, therefore, apparent that the detention order has been passed not on the grounds which can be said to be germane to breach of public order. The detention order cannot be based on the ground of breach of law and order and, hence, the order of detention cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The impugned order dated 25th April 1996, passed by the District Magistrate, Vadodara, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to

release the petitioner forthwith and set him at liberty,  
if not required in any other cases. Rule is made  
absolute.

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(swamy)\*\*\*\*